Supreme Court of the United States

October Term, 1971

No. [illegible]

ALBERT BARNS and CHRIS CARIS,

Petitioners,

vs.

ILLINOIS CRIME INVESTIGATING COMMISSION,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE RESPONDENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 565

ALBERT SARNO and CHRIS CARDI,

Petitioners,

vs.

ILLINOIS CRIME INVESTIGATING COMMISSION,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Illinois in this case is reported at 45 Ill. 2d 473 (1970).

JURISDICTION

The petition for a writ of certiorari to the Supreme Court of Illinois was filed on August 20, 1970, pursuant

to Title 28 U.S.C. § 1257(3). On March 1, 1971, this Court granted the writ limited to questions one and three as presented by the petition.

QUESTIONS PRESENTED FOR REVIEW

Questions one and three as set forth in the petition are:

1. Must the State affirmatively demonstrate to respondents, when testifying pursuant to the Illinois Immunity Statute, that an immunity, as broad in scope as the Fifth Amendment, is available and applicable to them?

3. Assuming the immunity statute was not as broad as the Fifth Amendment, as far as future state prosecutions are concerned, may a person plead the Fifth Amendment when it is evident, from the implication of the questions in the setting in which they are asked, that responsive answers to the questions might be dangerous because injurious disclosure could result in future state prosecutions?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The fifth amendment to the Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The fourteenth amendment, section one provides in part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ill. Rev. Stat. (1965), Ch. 38, § 203-14 provides:

> "In any examination by or hearing before the Commission, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the Chairman or the Executive Director, in writing, requests a circuit court of the State to order that person to answer the question or produce the evidence, the court shall so order unless it finds that to do so would be contrary to the public interest, and that person shall comply with the order. After complying, and if, but for this Section, he would have been privileged to withhold the answer given or the evidence produced by him, that person shall not be prosecuted for or on account of any transaction, matter or thing concerning which, in accordance with the order, he gave answer or produced evidence. He may, nevertheless, be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order. The court shall not order any such person to testify or produce evidence if it reasonably appears to the court that such testimony or evidence, documentary or otherwise, would subject such witness to an indictment, information or prosecution (except for perjury committed in the giving of such testimony or the producing of such evidence) under the laws of another State or of the United States."

STATEMENT OF THE CASE

The factual circumstances of this case are not in dispute. During 1968, the Illinois Crime Investigating Commission was conducting hearings pursuant to its investigation of organized crime, and, more precisely, of the "juice rackets" in Illinois. On February 8, 1968, petitioners Albert Sarno and Chris Cardi were ordered to appear and answer questions before the Commission on February 24, 1968. The petitioners appeared before the Commission on that date and in response to each question asked of them, invoked the fifth amendment privilege against compulsory self-incrimination. (A. 3-18).

The Commission on March 21, 1968, filed a motion in the Circuit Court of Cook County requesting the entry of an order granting each of the petitioners immunity from future criminal prosecution "for or on account of any transaction, matter or thing concerning which, in accordance with the order, he gave answer or produced evidence" pursuant to Ill. Rev. Stat. 1965, Ch. 38, § 203-14. The motion detailed the appearance before the Commission on February 24, 1968, of each of the petitioners and their refusal to answer questions based upon the fifth amendment privilege. The motion also incorporated each of the questions asked of the petitioners. (A. 18). The petitioners filed a Motion to Dismiss or in the Alternative to Strike on April 9, 1968. (A. 19). The Commission replied on April 22, 1968. (A. 22). Petitioners' alternative motions were denied on July 26, 1968 and they were ordered to answer the petition. The answer was filed December 27, 1968. (A. 23).

The Court on January 30, 1969, entered an order pursuant to Ill. Rev. Stat. 1965, Ch. 38, § 203-14 requiring Sarno and Cardi to appear before the Commission and answer questions. The order further provided "that each of the said Defendants/Respondents be and he is hereby

released from all liability to be prosecuted or punished on account of any matter to which he shall testify before the said Commission, except for perjury or contempt of Court by the said Respondents/Defendants before the said Commission." (A. 24).

The petitioners with counsel appeared before the Commission on February 28, 1969. Both men refused to answer the questions previously propounded, invoking the privilege against self-incrimination. (A. 24-51). Counsel for the Commission read the immunity order to each petitioner at the conclusion of questioning and gave each man a third opportunity to answer. (A. 50-51, R. 265-66).

The Crime Commission filed a petition for a rule to show cause why each of the petitioners should not be held in contempt on April 7, 1969. (A. 51). The petitioners filed their answer on May 6, 1969. On May 9, 1969, the court adjudged each petitioner in contempt and sentenced each to six months imprisonment in the County Jail. (A. 52).

The petitioners appealed this judgment and sentence to the Supreme Court of Illinois, which affirmed the decision of the lower court on May 27, 1970. See *Illinois Crime Investigating Commission* v. *Albert Sarno, et al.*, 45 Ill. 2d 473 (1970) (A. 53-56).

Petitioners then filed a petition for writ of certiorari to the Supreme Court of Illinois on August 20, 1970. This Court granted certiorari on March 1, 1971. (A. 57).

SUMMARY OF THE ARGUMENT

Petitioners Sarno and Cardi were granted immunity from future prosecution "for or on account of any transaction, matter or thing" concerning which they gave answer during hearings conducted by the Illinois Crime Commission as part of its investigation of the "juice"

rackets in Illinois. Both men appeared before the Commission on two occasions and each was given three opportunities to answer the Commission questions. Each persisted in his refusal to answer based upon the fifth amendment privilege against compulsory self-incrimination. The contempt citations upon which this case is grounded followed.

At every juncture of the proceedings before the Commission, the State clearly demonstrated to the petitioners the existence of a valid grant of immunity coextensive with the fifth amendment privilege. The State took affirmative action, obtaining a court order granting to each petitioner total immunity from future prosecution for crimes to which his compelled testimony relates. The petitioners themselves admit that the State intended to grant them immunity from future criminal prosecution. They argue only that the immunity was insufficient to protect them from prosecution for crimes indirectly established by their compelled testimony. However, the record clearly reflects that the State of Illinois accurately, forthrightly and persistently demonstrated to the petitioners the existence of a complete grant of transactional immunity specifically applicable to them.

The constitutional guarantee against compulsory self-incrimination is fully supplanted by immunizing a witness from the use of his compelled testimony either directly or indirectly in a subsequent criminal prosecution. The Illinois statute, however, imposes the greater governmental restraint of barring all future prosecution of the immunized witness for crimes established by his direct testimony or its fruits. Prior decisions of this Court and of the Supreme Court of Illinois mandate the conclusion that the petitioners were granted full transactional immunity and therefore, may be compelled to testify.

ARGUMENT

I.

A STATUTORY GRANT OF IMMUNITY WHICH PROTECTS THE WITNESS FROM PROSECUTION "FOR OR ON ACCOUNT OF ANY TRANSACTION, MATTER OR THING CONCERNING WHICH, IN ACCORDANCE WITH THE ORDER HE GAVE ANSWER OR PRODUCED EVIDENCE" SECURES THE WITNESS FROM COMPULSORY SELF-INCRIMINATION.

Petitioners Sarno and Cardi ground their entire argument before this Court on the invalid assumption that the statutory grant of immunity which they received "was not as broad as the Fifth Amendment, as far as future state prosecutions are concerned."[1] Premising their position on this assumption, they then argue that their continued refusal to testify based upon their fifth amendment privilege was proper since ". . . it is evident, from the implication of the questions in the setting in which they are asked, that responsive answers to the questions might be dangerous because injurious disclosure could result in future state prosecutions."[2] The question of whether the immunity granted by the Illinois Crime Investigating Commission statute (Ill. Rev. Stat. 1965, Ch. 38, § 203-14) is sufficient to supplant the privilege against compulsory self-incrimination is dispositive of petitioners' argument. We turn to that issue.

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1. Questions Presented, Question 3, Petition 2; Pet. Brief 3 (question 1), A. 57.

2. Ibid.

The Crime Commission statute provides that in any hearing or examination by the commission in which a person answers a question or produces evidence under the compulsion of a court order entered after the witness has refused to answer or produce evidence on the ground of self-incrimination, and "[a]fter complying, and if, but for this Section, he would have been privileged to withhold the answer given or the evidence produced by him, *that person shall not be prosecuted for or on account of any transaction matter or thing concerning which, in accordance with the order, he gave answer or produced evidence.*"[3] (emphasis added). This provision grants the petitioners immunity from future prosecution by the State of Illinois for any criminal offense established by their answers to the Commission questions or for any criminal offense established through the use of their answers as an investigative tool. The petitioners thus were granted total immunity from future prosecution for any crime to which their compelled testimony relates—*transactional immunity.* Contrary to petitioners' argument, prior Illinois decisions interpreting identical or similar language establish this statute as a bar to future criminal prosecution for any offense concerning which the immunized witness is compelled to testify.

In *People* v. *Boyle,* 312 Ill. 586 (1924), the Supreme Court of Illinois reviewed the contempt conviction of a witness called to testify before a county grand jury investigating bribery charges. The witness, having invoked his state constitutional privilege against self-incrimina-

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3. Ill. Rev. Stat., 1965, Ch. 38, § 203-14.

tion[4] was granted immunity pursuant to section 35 of the Bribery Act (Smith's Stat. 1923, p. 666) which provided in relevant part that any material witness whose testimony might incriminate him could be "released for all liability to be prosecuted or punished on account of any matter to which he shall be required to testify . . . and if he shall testify, such order shall forever after be a bar to any indictment, information or prosecution against him for such matter." After receiving a grant of immunity pursuant to this provision, Boyle still refused to testify before the grand jury and was held in contempt.

On appeal, Boyle asserted that "any answers which he might make to said questions, or any of them, would tend to connect him with the crime of conspiracy to bribe a juror, or conspiracy to do an illegal act injurious to the administration of public justice, or to commit a felony or conspiracy at common law, or would show facts which would tend to put him in criminal contempt of court for interfering with or attempting to bribe a juror . . . and

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4. Article 2, Section 10 of the Constitution of Illinois (1870) provided that:

> "No person shall be compelled in any criminal case to give evidence against himself."

The state constitutional privilege is identical to that provided by the federal Constitution. Thus, although the federal privilege was inapplicable in state proceedings prior to 1964, federal precedent was determinative in interpreting the state constitutional privilege. See: Halpin v. Scotti, 415 Ill. 104, 107 (1953); People v. Grod, 385 Ill. 584 (1944). Therefore, the state court decisions antedating Malloy v. Hogan, 378 U.S. 1 (1964) apply with equal force to the petitioners' present claim under the federal constitutional privilege.

that the immunity granted to him by the court would not release him from liability to be prosecuted for such offenses." (312 Ill. at 593-94). Considering the history and policies of the privilege against self-incrimination and prior state and federal cases interpreting the privilege, the Supreme Court of Illinois stated:

> "Thus, if the legislature by the enactment of an immunity statute has provided that the witness shall not be liable to criminal prosecution for any transaction necessarily disclosed by the testimony which he is required to give and for any transaction concerning which such testimony constitutes an essential link in a chain of evidence against him, the immunity afforded by the statute is thereby made coextensive with the protection afforded him by the Constitution and becomes a complete substitute for it, and he is required to testify." (312 Ill. at 597).

The court went on to conclude that "in no other way than by giving complete amnesty can an immunity statute be sustained, for in no other way can the act become a guaranty as complete as the constitutional privilege taken away." (312 Ill. at 603).

The Illinois Court had occasion to review the constitutional sufficiency of the same statute once again in 1931. *People* v. *Rockola,* 346 Ill. 27. Following the rule established in *Boyle, supra.,* the court stated: "Unless protected by an authorized immunity order no witness can be required to give testimony which either directly or indirectly tends to incriminate him or to form a link in a chain of circumstances that might result in punishment for crime." (346 Ill. at 31).

The immunity provision of the Illinois Cigarette Tax Act, Ill. Rev. Stat. 1951, Ch. 120, par. 453.10, was scrutinized and upheld in *Halpin* v. *Scotti,* 415 Ill. 104 (1953).

That statute provided in relevant part: "no person shall be prosecuted or subjected to any criminal penalty for, or on account of, any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Department or an officer or employee thereof . . . ." (415 Ill. at 108). This provision is substantially identical in language to the immunity provision of the Crime Commission Act. In *Halpin*, the Court reviewed the sufficiency of the immunity under both the federal and state constitutional protections against self-incrimination, and found that:

> "The plain language of section 10a clearly renders appellee immune to prosecution or criminal penalty for anything concerning which he may truthfully give evidence. The reason for the asserted constitutional privilege thus ceases, and it cannot be claimed. The statute, being coextensive in its immunity with the privilege guaranteed by our State and Federal constitutions, does not offend that fundamental law, and its application here cannot be invalid as a violation of that privilege." (415 Ill. at 109).

And most recently, in *People* v. *Walker* 28 Ill. 2d 585 (1963), the Supreme Court of Illinois considered the requisite scope of an immunity statute sufficient to supplant the privilege against compulsory self-incrimination. In *Walker*, the Court construed the grand jury witness immunity provision contained in Ill. Rev. Stat. 1961, Ch. 38, par. 714.1 which provided that "such witness be released from all liability to be prosecuted or punished on account of any transaction, matter or thing concerning which he may be required to testify * * *; and such order shall forever after be a bar to any indictment, information or prosecution against the witness for any felony or misdemeanor shown in whole or part by such testimony . . ." (28 Ill. 2d at 589-90).

Walker had pleaded guilty to an indictment charging him with the burglary of a church. At his probation hearing and before a subsequent grand jury, he named two men as his accomplices. One of these men was indicted for the burglary and Walker was called as a witness for the state at the trial. He invoked his privilege against self-incrimination and refused to testify. On motion of the prosecutor, the court entered an immunity order in the language of the above-quoted statute. Walker then testified, recanting his earlier sworn statements naming the two men as accomplices.

Walker was indicted on five counts of perjury and perjury by contradictory statements. He was tried and found guilty. On appeal from that judgment, he asserted that his perjury conviction violated his privilege against compulsory self-incrimination. Mr. Justice Schaefer, writing for an unanimous court, reversed the conviction stating: "The statute eliminates the constitutional privilege against self-incrimination by a grant of immunity that bars a future prosecution of the witness for any offense 'shown in whole or part by such testimony.' With the possibility of self-incrimination thus eliminated, the witness may be compelled to testify." (28 Ill. 2d at 590).

These precedents clearly reflect the settled Illinois law. A grant of immunity, to be valid in Illinois must protect the witness from future prosecution by the State for any offense shown in whole or in part by his compelled testimony. This was the rule applied by the state supreme court to the facts of the instant case.

The opinion below accurately reflects that the Supreme Court of Illinois construed the immunity provision of the Crime Commission statute as a grant of transactional immunity. The court, referring to section 203-14 stated:

"That section grants immunity to the defendants from further prosecutions." *Illinois Crime Investigating Commission* v. *Sarno, et al.*, 45 Ill. 2d 473, 476 (1970) (A. 56). Hence, a grant of transactional immunity by state authorities in Illinois is required to supplant the state or federal constitutional privilege within Illinois.[5] *People* v. *Boyle, supra; People* v. *Walker, supra.* The petitioners received such a grant of total immunity.

The petitioners make much of a minor difference in phraseology between the grand jury witness immunity statute construed in *Walker*, and the Crime Commission statute. Their argument, however, ignores the manifest language of the Crime Commission statute and is merely a smokescreen for a meritless point.

The statute construed in *Walker* and which the petitioners admit is sufficient to supplant the privilege in Illinois (Pet. Br. 10) provided that a grant of immunity pursuant to the statute bars prosecution of the witness for any offense "shown in whole or in part" by his testimony. (28 Ill. 2d 589-90.) Petitioners argue that the Crime Commission statute providing "that person shall not be prosecuted for or on account of any transaction, matter or thing concerning which, in accordance with the order, *he gave answer,*" (emphasis added by petitioners) grants a narrower immunity than the grand jury act. They attempt to foster this theory by referring to the fact that the Crime Commission statute was amended subsequent to the Court's opinion in *Walker*, but the quoted language was left unchanged. This, they reason, is a "clear indication that the legislature had no intention to grant to a witness an immunity suf-

5. The petitioners admit they fear only future prosecution by the State of Illinois. (Petition 9; Pet. Br. 12, 14, 15-16).

ficient to supplant the privilege found adequate in *Walker.*" (Pet.'s Br. 10-11). Such an argument is a futile attempt to substitute their theories of this case for the plain meaning of the statutory language and to create a legislative intent for which support is totally lacking in the history of the Crime Commission statute.

Petitioners argue that since the *Walker* statute immunizes the witness for any offense "shown in whole or in part" by his testimony, and the Crime Commission statute covers offenses concerning which "he gave answer," that the *Walker* statute grants immunity including offenses shown both by the direct testimony and by the fruits of that testimony, but that the Crime Commission provision includes only offenses covered by the direct testimony of the witness (to which "he gave answer"). Petitioners reason that such a grant of immunity does not include the fruits of the compelled testimony and therefore, is invalid.

The petitioners have emphasized a minor phrase in the Commission statute while completely ignoring the relevant wording which is dispositive of their position. The Commission statute grants immunity *"for or on account of* any transaction, matter or thing concerning which * * * he gave answer." (emphasis added). This provision immunizes the witness from criminal prosecution for offenses shown by his direct testimony ("for * * * any transaction, matter or thing") and for offenses which can only be established through the use of the direct testimony as an investigative tool i.e., the fruits of the testimony ("or *on account of* any transaction, matter or thing concerning which * * * he gave answer"). This interpretation is dictated by both prior Illinois precedents

and by decisions of this Court construing identical statutory language.

In *Brown* v. *Walker*, 161 U.S. 591 (1896), this Court reviewed the sufficiency of a federal statutory grant of immunity which provided in part that "no person shall be prosecuted or subjected to any penalty or forfeiture *for or on account of any transaction, matter or thing, concerning which he may testify*, or produce evidence documentary or otherwise. . . ." (161 U.S. at 594) (emphasis added). This Court stated that "[t]he act of Congress in question, securing to witnesses immunity from prosecution, is virtually an act of general amnesty. . . ." And "while the constitutional provision in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity, and we are therefore of the opinion that the witness was compellable to answer, and that the judgment of the court below must be affirmed." (161 U.S. at 601, 610).

In *Ullmann* v. *United States*, 350 U.S. 422 (1956), this Court upheld the Immunity Act of 1954 over a challenge that the grant of immunity from future prosecution *"for or on account of any transaction, matter, or thing concerning which he is compelled*, after having claimed his privilege against self-incrimination, to testify or produce evidence. . ." (350 U.S. at 424) (emphasis added) was insufficient to supplant the privilege. Three years later, in *Brown* v. *United States*, 359 U.S. 41 (1959) this Court reviewed the same language contained in a federal grand jury witness immunity statute and found the law settled in that such a provision confers immunity from prosecution coextensive with the privilege against self-incrimination. "It is thus clearly too late in the day to question the constitutional sufficiency of the immunity provided . . ." (359 U.S. at 46).

The statutes upheld in *Brown* v. *Walker*, *supra.*; *Ullmann* v. *United States*, *supra.*; and *Brown* v. *United*

States, supra., are identical to the Illinois Crime Investigating Commission provision herein challenged.[6] There is but one conclusion: the Illinois immunity statute affords protection both to the compelled testimony and to the fruits of that testimony. Section 203-14 of the Illinois statute completely protects "against the use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party."[7] The statute is a bar to future prosecution "for or on account of any transaction, matter or thing" concerning which a witness is compelled to testify before the Commission.[8] Since the statute confers transactional immunity, the provision totally meets the constitutional requirements of the privilege. There is no infirmity.

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6. See also: Reina v. United States, 364 U.S. 507 (1960) (Narcotic Control Act of 1956, 18 U.S.C. § 1406, containing identical language, interpreted); 8 Wigmore on Evidence §§ 2282, 2283 (McNaughten Rev. 1961).

7. Counselman v. Hitchcock, 142 U.S. 547, 586 (1892). See also: Hoffman v. United States, 341 U.S. 479 (1951); Blau v. United States, 340 U.S. 159 (1950).

8. Petitioners argue that omission of the phrase "or subject to penalty or forfeitures" from the immunity provision renders the act invalid because they may be left exposed to a civil damage suit which might result in up to six months imprisonment for failure to pay the civil judgment. This argument is inapt.

The words "penalty or forfeiture" when used in immunity legislation refer only to "proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him and though they may be civil in form, are in their nature criminal for Fifth Amendment purposes." *Boyd* v. *United States*, 116 U.S. 616, 634 (1886). In these cases, money

The controversy concerning a precise delimitation of the scope of the privilege has been renewed in recent years by the decision of *Murphy* v. *Waterfront Commission of New York Harbor*, 378 U.S. 52 (1964). Prior to *Murphy*, the only definitive statement of the requirements of a valid statutory immunity sufficient to supplant the privilege appeared in *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892). There this Court, in holding Section 860 of the federal Revised Statutes unconstitutional, stated:

> "We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him can have the effect of supplanting the privilege conferred by the constitution of the United States. Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which

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liability or property forfeiture is predicated solely upon a finding of the owner's wrongful or criminal conduct and is not the result of a separate civil suit for damages incurred as a result of a private wrong. Because of their essentially criminal nature, the Fifth Amendment anti-incrimination privilege has been held applicable to penalty or forfeiture proceedings. *United States* v. *United States Coin and Currency*, —— U.S. ——, 91 S. Ct. 1041 (April 5, 1971); *One* 1958 *Plymouth Sedan* v. *United States*, 380 U.S. 693 (1965). See also *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968). Therefore, a person compelled to give evidence pursuant to a grant of immunity would be protected by that immunity from penalties and forfeitures as well as the direct criminal liability established by his compelled testimony. This would be true whether transactional or use immunity is found to be constitutionally required, since under either requirement the fruits of compelled testimony as well as the direct evidence given by the witness must be protected.

> the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. *In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.*" (142 U.S. at 585-86).

This concept has come to be known as transactional immunity. It is premised on the theory that once the privilege has been properly invoked, the only adequate protection for a witness compelled by the government to testify pursuant to a grant of immunity is to bar that government from ever prosecuting the witness for any crime established in whole or in part by his testimony.[9] This is the theory adopted by the Illinois legislature and embodied in the Illinois Crime Investigating Commission statute.

Opposing this interpretation of the privilege is the concept which forbids the use in a subsequent criminal proceeding of testimony or evidence given pursuant to a grant of immunity either as direct evidence of a criminal offense or as an investigative tool—*use immunity*. In effect, use immunity creates an exclusionary rule of evidence akin to that presently followed in cases involving coerced confessions and unreasonable searches and

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9. With this Court's holding in Murphy v. Waterfront Commission of New York Harbor, 378 U.S. 52, 77-78 (1964) that the constitutional privilege against self-incrimination "protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law," a grant of immunity by one jurisdiction to which the privilege is applicable is effective to protect the witness in that jurisdiction as well as in all other jurisdictions to which the privilege also applies.

seizures. And, unlike transactional immunity, it is not an absolute bar to future prosecution for crimes about which the immunized witness has testified, although in practice it may have that effect. Immunity from use of compelled testimony or evidence and its fruits is all that is constitutionally required to supplant the fifth amendment privilege. This view is supported by the express language of the amendment, by the history and policies of the privilege, and by prior decisions of this Court. And further, such a conclusion is not precluded by the holding of *Counselman*.

The express language of the fifth amendment precludes any governmental compulsion resulting in a person appearing as a witness against himself in a criminal case, either by compelling the person to testify or to produce evidence of his own guilt. Under a completely literal reading of the provision then, no immunity statute is sufficient to supplant the privilege. This interpretation has some support among historians and in dissenting opinions of this Court. See: *Piccirillo* v. *New York*, —— U.S. ——, —— 91 S. Ct. ——, 27 L. Ed. 2d 596, 606 (1971) (Mr. Justice Brennan dissenting); *Brown* v. *Walker*, 161 U.S. 591, 610, 628 (1896) (Mr. Justice Shiras and Mr. Justice Field dissenting); *Ullmann* v. *United States*, 350 U.S. 422, 449 (1956) (Mr. Justice Douglas and Mr. Justice Black dissenting). However, this view has never gained wide acceptance. Decisions of this Court adhere to the principle first enunciated in *Counselman* that a statutory grant of immunity is valid if it is coextensive with the scope of the privilege against self-incrimination. *Murphy* v. *Waterfront Commission of New York Harbor*, *supra*, at 54; *Ullmann* v. *United States*, *supra*; *Brown* v. *Walker*, *supra*. Thus, the courts and

commentators in recent years have limited their discussion to the scope of the fifth amendment privilege."

The protection against compelling a person to be a witness against himself in a criminal proceeding represents the ultimate recognition of our legal system as accusatorial, rather than inquisitorial in nature. That is, "Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth." *Malloy* v. *Hogan*, 378 U.S. at 8. This Court in *Miranda* v. *Arizona*, 384 U.S. 436 (1966) focused sharply on the importance of the privilege in our constitutional scheme.

> "We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values. All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a fair state-individual balance, to require the government to shoulder the entire load, to respect the inviolability of the human personality, our

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10. Singer, "State Grants of Immunity—The Problem of Interstate Prosecutions Prevention," 58 J. Crim. L. C. & P. S. 218 (1967); Sobel, "The Privilege Against Self-Incrimination 'Federalized,'" 31 Brooklyn L. Rev. 1 (1964); Wendel, "Compulsory Immunity Legislation and the Fifth Amendment Privilege: New Developments and New Confusion," 10 St. Louis U. L. J. 327 (1966); Note, "Immunity Statutes and the Constitution," 68 Colum. L. Rev. 959 (1968); Note, "State Immunity Statutes in Constitutional Perspective," 1968 Duke L. J. 311; Note, "In Re Koota: The Scope of Immunity Statutes," 61 Nw. U. L. Rev. 654 (1966); Note, "Counselman, Malloy, and Murphy, and The States' Power to Grant Immunity," 20 Rutgers L. Rev. 336 (1966); Comment, "Federalism and The Fifth: Configurations of Grants of Immunity," 12 U.C.L.A. L. Rev. 561 (1965).

> accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. In sum, the privilege is fulfilled only when the person is guaranteed the right to remain silent 'unless he chooses to speak in the unfettered exercise of his own will'." (384 U.S. at 460) (citations omitted).

Thus, the privilege is a mainstay of our legal system which must be accorded a liberal construction in favor of the right which it was intended to secure. *Counselman* v. *Hitchcock, supra.*

The fifth amendment provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land of naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

With the exception of the final clause, the amendment embodies a series of safeguards for a person faced with criminal prosecution. The amendment does not prohibit criminal prosecution. Rather, it recognizes man's right to liberty as so fundamental that when that right is threatened, as by an impending criminal prosecution, basic safeguards must be interposed between the individual and the prosecuting authority to preserve the balance between the rights of the individual and the responsibilities of government.

Two analogies are useful in pinpointing the form which the safeguard prohibiting compulsory self-incrimination takes. The first is to the rule now followed in both state and federal proceedings in cases involving coerced confessions. The second analogy is to cases arising under the fourth amendment prohibition of unreasonable searches and seizures. Both are relevant in determining the scope of the privilege against self-incrimination—the coerced confession cases because they arise under the same privilege and thus constitute precedent which may not be disregarded, and the search and seizure cases because they involve very similar if not identical considerations.

As early as 1897, this Court in *Bram* v. *United States*, 168 U.S. 532, recognized that

> "In criminal trials, in Courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the fifth amendment to the Constitution of the United States commanding that no person 'shall be compelled in any criminal case to be a witness against himself.'"

With the decision of *Malloy* v. *Hogan*, 378 U.S. 1 (1964), the substantive standards underlying the privilege are equally applicable to proceedings in the state courts. Thus, in state as well as

> "In the federal Courts, the requisite of voluntariness is not satisfied by establishing merely that the Confession was not induced by a promise or a threat . . . [*A*] *confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise.*" *Bram* v. *United States*, 168 U.S. at 532. (emphasis added).

See also: *Miranda* v. *Arizona*, 384 U.S. 436, 462 (1966); *Ziang Sun Wan* v. *United States*, 266 U.S. 1, 14-15 (1924).

In reaching that conclusion, this Court discussed the historical reasons giving rise to the adoption of the fifth amendment and of the safeguards which the provision was intended to secure and found that "the generic language of the amendment was but a crystallization of the doctrine as to confessions . . . [A] maxim, which in England was a mere rule of evidence, became clothed in this Country with the impregnability of a constitutional enactment."[11] The implementation of this constitutional safeguard in cases involving an involuntary confession is thus particularly relevant in determining how the same safeguard should be implemented when a government—state or federal—otherwise compels testimony, as by a grant of immunity.

The decisions of this Court have established that no conviction based either in whole or in part upon an involuntary confession is valid. *Rogers* v. *Richmond*, 365 U.S. 534 (1961); *Malinski* v. *New York*, 324 U.S. 401 (1945); *Bram* v. *United States*, *supra*. However, criminal prosecution for the crime to which the confession relates is not barred. Instead, the government has the burden of proving its case by independent evidence, or evidence untainted by the involuntary confession. See *Miranda* v. *Arizona*, 384 U.S. at 479.

The same rule is appropriate where testimony is compelled from a witness by a grant of immunity. The analogy is inescapable. Both an involuntary confession and compelled testimony are admissions by an individual which he has been forced to make either by threats or promises or by a grant of immunity and the threat of a contempt citation if he refuses to answer. The question no longer is whether a "person may be compelled

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11. Bram v. United States, 168 U.S. at 543, 545 (1897).

to be a witness against himself in a criminal case" but rather, what remedy will reinstate the effectiveness of the privilege for that person. Once the government employs compulsion, does restoration of the privilege require the barring of all future prosecution of the individual concerning matters about which he has been forced to waive his privilege or is exclusion from evidence of the compelled admissions and the fruits thereof sufficient.

This Court has adopted the latter course both in the confession cases and in those instances where an unconstitutional search and seizure has occurred. See: *Mapp* v. *Ohio,* 367 U.S. 643 (1961). Historically, the provisions prohibiting compelled self-incrimination and unreasonable searches and seizures intertwine to protect the individual from:

> "All invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property***.
>
> Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation*** [of those amendments]."

Boyd v. *United States,* 116 U.S. 616, 630 (1886) as quoted in *Mapp* v. *Ohio,* 367 U.S. 643, 646-47 (1967). Both protections are constitutional in nature and both are enforced by exclusionary rules of evidence. The protection thus afforded is best expressed in *Mapp* when the

Court says that "'conviction by means of unlawful seizures and enforced confessions*** should find, no sanction in the judgments of the Courts**,' and that such evidence *'shall not be used at all'.*" (367 U.S. at 648) (citations omitted) (emphasis added)

This result is most applicable where testimony is compelled pursuant to a grant of immunity.[12] Both the form of compulsion and the proceedings in which the compelled evidence is given are matters of public record. There is no opportunity for such nonpublic State action as a custodial police interrogation or the search of a person's home. Any other reading of the privilege is unnecessarily burdensome.[13]

This Court has recognized and adopted use immunity by its opinion in *Murphy* v. *Waterfront Commission of New York Harbor, supra.* Determining the required effect of a state grant of immunity on a subsequent federal prosecution, this Court held "that the constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state

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12. Singer, supra, at 220, fn. 22.

13. See: 8 Wigmore on Evidence § 2283 (McNaughton Rev. 1961):

"Immunity statutes providing against 'use' of the compelled testimony could easily and properly be construed to proscribe not only *direct* use of the evidence, but *indirect* use as well. That is, they could be construed to proscribe use of the 'fruit of the tree', a doctrine sufficing in the areas of search and seizure and wiretap. (footnote omitted). Such a construction would render the statutes valid, the immunity being as broad as, but not wastefully broader than, the privilege." (footnote omitted) (emphasis by the author).

law and a federal witness against incrimination under state as well as federal law." 378 U.S. at 77-78. Immediately following this holding, the opinion continued "we must now decide what effect this holding has on existing state immunity legislation." 378 U.S. at 78. The Court then considered the holding in *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892), as a statutory interpretation compelled by the facts of that particular case; namely that the *Counselman* statute:

> " 'Could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court . . .,' id., at 564,

that it:

> 'could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted . . .,' *ibid.*,

and that it:

> 'affords no protection against the use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party.' Id., at 586." (378 U.S. at 78-79).

In view of this statutory deficiency in not prohibiting the use of immunized testimony as an investigative tool, this Court in *Counselman* was forced to find that the statute was not as broad in scope as the fifth amendment privilege and, therefore, invalid.

Murphy applied the *Counselman* holding to the companion holdings of *Malloy* and *Murphy* that "the same

standards must determine whether [a witness'] silence in either a federal or state proceeding is justified' *Malloy* v. *Hogan, ante,* at 11," and further held "the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless *the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him.*" 378 U.S. at 79 (emphasis added). If the same standards apply to the states and to the federal government, this holding must have the same effect whether only one or several of these jurisdictions are involved. In either case, both the witness and the government are left "in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity." 378 U.S. at 79. The Constitution requires no more.[14]

The efficacy of use immunity is further supported by the position in which the prosecuting authority is placed following a grant of immunity and the testimony of the witness. In any subsequent criminal prosecution of the

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14. Contrary to the position taken by Mr. Justice Brennan in his dissent in *Piccirillo* v. *New York, supra,* there is no constitutional justification for a different rule applicable only in the jurisdiction granting immunity. His position in that case does not appear to be grounded upon a constitutional requirement but rather upon a practical consideration which assumes a disinterested and non-political spirit of cooperation among the law enforcement officials of a single jurisdiction. There is no basis for the assumption that officials in the granting jurisdiction will work more or less closely with officials in that or another jurisdiction and such a consideration certainly is insufficient reason for promulgating a separate constitutional rule in cases involving a single sovereignty which is not otherwise compelled.

immunized witness, the government has the burden of proving that its evidence is untainted by the immunized testimony. See *Murphy* v. *Waterfront Commission of New York Harbor, supra,* at 79, fn. 18. This requirement is an additional protection afforded the immunized witness which is not accorded in the analogous search and seizure cases. On a motion to suppress evidence allegedly seized in violation of the fourth amendment, the defendant has the burden of proving the illegality of the search and seizure. Requiring the government in immunity situations to prove an independent source for its evidence will operate as a complete bar to future prosecution in some cases. However, both the government and the witness are left in the same position as though the witness had invoked his fifth amendment privilege and refused to testify in those cases where the prosecutor can prove an independent basis for prosecution. Use immunity thus maintains the balance between the individual's liberty and government's responsibility which it is the purpose of the fifth amendment privilege to protect.[15]

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15. The concept of use immunity also finds support in decisions of this Court subsequent to Murphy. Thus in Garrity v. New Jersey, 385 U.S. 493 (1967), the use in a subsequent criminal prosecution of incriminating statements compelled by the threat of job forfeiture was forbidden. Mr. Justice Douglas, speaking for the majority, stated:

> "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." (385 U.S. at 500).

Regardless of whether this Court adopts the view that use immunity is sufficient to displace the fifth amendment privilege or requires the absolute bar to future prosecution imposed by transactional immunity, the statute which the petitioners herein question suffers no infirmity. The Crime Commission provision grants transactional immunity. Both the express language of the act and prior interpretations of similar and identical provisions by the Supreme Court of Illinois and by this Court support the conclusion that the statute prohibits future criminal prosecution of an immunized witness for crimes established by his direct testimony and its fruits. At every stage of the proceedings below, the State clearly represented its intention to grant each of the petitioners immunity pursuant to this statute. The petitioners were warned that their continued refusal to answer the Commission questions following the grant of immunity con-

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And see: Spevack v. Klein, 385 U.S. 511, 520, 529 (1967) (Mr. Justice Harlan, dissenting). Accord: Stewart v. United States, —— F. 2d —— (9th Cir. 1971) (No. 71-1212, 71-1213), cert. granted sub. nom. Kastigar v. United States, —— U.S. —— (1971), 39 U.S. L. W. 3511 (May 17, 1971); Uniform Sanitation Men Assoc., Inc. v. Commissioner of New York, 426 F. 2d 619 (2nd Cir. 1970); United States v. Shillitani, 345 F. 2d 290, 293 (2nd Cir. 1965), vacated on other grounds, 384 U.S. 364 (1966); Application of Longo, 280 F. Supp. 185 (S.D. N.Y. 1967); Ciffo v. McClosky, 273 F. Supp. 604 (S.D. N.Y. 1967); New Jersey State Commission of Investigation v. Zicarelli, 55 N.J. 249, 261 A. 2d 129 (1970), prob. juris. noted, —— U.S. —— (1971), 8 Crim. L. Rptr. 4159. Contra: Piccirillo v. New York, 400 U.S. 548, 562 (1971) (Mr. Justice Brennan, dissenting); In The Matter of Korman, —— F. 2d —— (7th Cir. 1971) (No. 71-1328); In Re Grand Jury Testimony of Joanne Kinoy, —— F. Supp. —— (S.D. N.Y. 1971) (No. M-11-188).

stituted the offense of contempt for which they could be punished criminally. They chose to remain silent. They may make this choice but they may not escape its consequences. Having been granted complete immunity from future prosecution for crimes related to their compelled testimony, their continued silence was contumacious and criminally punishable. There is no error.

II.

THE STATE AFFIRMATIVELY DEMONSTRATED TO THE PETITIONERS A VALID, AVAILABLE IMMUNITY SUFFICIENT TO SUPPLANT THE PRIVILEGE AGAINST COMPULSORY SELF-INCRIMINATION.

Petitioners Sarno and Cardi refused to answer questions after receiving a grant of immunity releasing them from all liability to be "prosecuted for or an account of any transaction, matter or thing concerning which, in accordance with the order, [they] gave answer or produced evidence." They assert without argument or explication that the State must affirmatively demonstrate to them that the immunity conferred is coextensive with the constitutional privilege forbidding compulsory self-incrimination before they may be required to testify on pain of contempt. Accepting that such a showing should be made to a silent witness asserting the privilege before that witness may be required to speak does not resolve the issue, however.[16] The petitioners reassert the

16. The necessity of an affirmative showing of a valid immunity occurs only in cases where the witness remains silent following immunization and the government then attempts to punish his conduct as contumacious. The wit-

substantive points which they have argued on appeal in support of their refusal to answer the Commission questions. Thus buttressing their position, they flatly assert that the required affirmative showing of a valid grant of immunity was not made to them and they therefore may not be held in contempt for their refusal to answer. The issue thus inferentially raised is whether a State when confronted with an immunized witness who questions the extent of the immunity conferred, must meet a standard of proof in demonstrating to the witness the validity of the granted immunity. Such a theory is based upon a misinterpretation of the holding of *Stevens* v. *Marks*, 383 U.S. 234 (1966) and finds no support in either precedent or policy.

In *Stevens* v. *Marks, supra*, this Court reviewed the contempt conviction of a New York City policeman who, after having signed a waiver of immunity (without the benefit of counsel) and appeared before a grand jury, attempted to assert his fifth amendment privilege and refused to answer questions propounded to him by the grand jury. Finding that Stevens had effectively withdrawn his initial waiver, this Court also noted that the State had maintained throughout the case and had repre-

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ness thus would have a complete defense to the contempt charge if he demonstrates either an invalid statutory grant of immunity or some misrepresentation of the availability of a valid immunity.

The problem does not exists where the witness is compelled and does testify or produce evidence without voluntarily waiving the privilege. In that situation, "a witness does not need any statute to protect him from the use of self-incriminating testimony he is compelled to give over his objection. The Fifth Amendment takes care of that without a statute." Adams v. Maryland, 347 U.S. 179, 181 (1954).

sented to Stevens that no immunity was available or applicable to him.[17] In that context this Court held that Stevens' efforts to withdraw the waiver of his fifth amendment privilege having been successful, ". . . and that in the absence of an immunity provision clearly made applicable to him, petitioner could properly stand on his privilege and refuse to answer potentially incriminating questions." (383 U.S. at 244)

In reaching that conclusion, this Court relied on *Raley* v. *Ohio*, 360 U.S. 423 (1959). A reference to *Raley* clarifies the precise meaning and scope of the holding in *Stevens* and consequently, the requirements which Illinois must meet in the instant case. In *Raley*, the appellants had appeared before a state investigative commission and been asked to answer questions. The chairman of the commission indicated to the witnesses that the privilege against self-incrimination was available and applicable to them. Other members of the commission and the commission's counsel indicated that no immunity provision was applicable to the witnesses. At the time, Ohio had an "automatic" immunity statute which removed any valid basis for a claim of privilege during the commission proceedings and made refusal to answer an offense, of which the appellants in *Raley* were convicted.

In that context this Court found that while there was no evidence indicating that the commission had tried to deceive the witnesses, the action of the State in representing to the witnesses that a privilege was clearly applicable to them and then convicting them of a criminal offense for exercising that privilege constituted "the most

17. 383 U.S. at 245.

indefensible sort of entrapment by the State . . . A State may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them." 360 U.S. at 438. (citations omitted).

From the circumstances in both *Raley* and *Stevens*, it becomes apparent that this Court considered one aspect of those cases as determinative—the issuance of vague or contradictory commands to a citizen may not support a criminal conviction for failure to comprehend or follow those dictates. See 383 U.S. at 245. Upon that underlying premise this Court found that "A witness has, we think, a constitutional right to stand on the privilege against self-incrimination until it has been fairly demonstrated to him that an immunity, as broad in scope as the privilege it replaces, is available and applicable to him." 383 U.S. at 246.[18]

Thus, the requirement of an affirmative showing means that a state may not mislead a witness as to the consequences of his answer or failure to answer. In conferring immunity, the state must demonstrate clearly its intent to immunize the witness and thus displace the fifth amendment privilege. The state is not required to meet possible substantive arguments which later may be promulgated by the witness on appeal from a contempt conviction for his refusal to answer. Such a result would place an impossible burden on the state and is contrary to prior decisions of this Court. See: *Scull* v. *Virginia*, 359 U.S. 344 (1959). Thus, the state has ful-

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18. In support of this view, see Stevens v. Marks, 383 U.S. 234, 246, 251 (Mr. Justice Harlan dissenting) fn. 7.

filled its burden when it clearly demonstrates to a witness that a grant of immunity intended to supplant the fifth amendment privilege is being conferred upon the witness and that a continued refusal to answer questions asked pursuant to this immunity grant is criminally punishable.

Illinois has met this test in the instant case. Both petitioners were at all times represented by their own, retained counsel. After their first appearance before the Commission and their refusal to answer questions based upon the fifth amendment privilege against self-incrimination, the Commission filed a formal motion setting forth a verbatim transcript of the questions asked of the petitioners and requesting an order granting immunity to Sarno and Cardi. Both men filed responsive pleadings to this motion accepting the basic premise that the State intended to grant them immunity, but contesting the limits of that immunity.

Following the grant of immunity, both men again appeared before the Commission. They were asked the same questions a second time and they again refused to answer. At the close of questioning, counsel for the Commission read to each witness the immunity order entered on January 30, 1969. This order contained the grant of immunity and the proviso that the witness was still subject to criminal sanction for perjury or contempt of court committed before the Commission.[19] The witness was then

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19. After propounding the questions designated in the immunity order to each witness, counsel for the Crime Commission stated:

"MR. ZAGEL: Mr. Cardi, I will now read to you portions of a signed order, signed by Judge Edward

given a third opportunity to answer the Commission questions. Each man again refused to answer.

At every step of the proceedings which resulted in the contempt citations herein questioned, the Commission clearly indicated to the petitioners that they had each been granted immunity pursuant to the Crime Commission statute. The Commission further informed Sarno

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J. Egan, on January 30, 1969. I am holding the order in my hand. The pertinent part reads:

'That each of the said respondents, to-wit, Chris Cardi, Patsy Ricciardi and Albert Sarno, is hereby order to be and appear before the said Commission on such date or dates and at such place or places as the said Commission may direct, provided that at least five days' written notice be served upon their respective attorneys, and to then and there answer the questions previously propounded to him and attached to the petition.

'The Court further orders that each of the said defendant-respondents be and he is hereby released from all liability to be prosecuted or punished on acts of any matter to which he shall testify before the said Commission except for perjury and contempt of court by the said respondent-defendants before the said Commission.'

Now, Mr. Cardi, I will inform you now, as I am sure you are well aware, that the questions asked of you by Mr. Flaum were the questions previously asked of you. And I would also inform you that Mr. Flaum and I, as counsel for the Commission, will recommend to the Commission that the Commission proceed against you and ask that the Court jail you for contempt of court.

Now, in light of that statement, do you wish to reconsider your position and answer any of the questions previously asked of you today?

and Cardi that their continued refusal to answer was a criminally punishable offense. The record firmly establishes that at all times during the Commission proceedings—the time of the contumacious conduct—"the voice of the State presently speaking to the [petitioners]"[20] clearly and accurately demonstrated the intent to confer a valid grant of immunity upon the petitioners. The State can do no more.

THE WITNESS: I refuse to testify on the grounds that I might incriminate myself." (Witness Cardi, R. 265-66; Witness Sarno, A. 50-51, R. 286-87).

20. Raley v. Ohio, 360 U.S. at 439.

CONCLUSION

In view of the foregoing arguments, the respondent respectfully requests this Court to affirm the decision of the Supreme Court of Illinois.

Respectfully submitted,

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